

APPEAL NO. 030105
FILED FEBRUARY 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 11, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable lumbar spine injury on _____; that the claimant had disability for the period beginning February 27 through March 1, 2002, and for the period beginning March 5 through September 15, 2002; and that the appellant (carrier) waived the right to contest the compensability of the claimed lumbar spine injury by not timely contesting the injury. The carrier appeals and the claimant responds, urging affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

INJURY AND DISABILITY

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the injury and disability determinations and conclude that the hearing officer's decision is supported by sufficient evidence. We affirm the decision and order of the hearing officer regarding whether the claimant sustained an injury and had disability.

CARRIER WAIVER OF THE RIGHT TO DISPUTE

The hearing officer determined that the carrier waived the right to contest compensability of the claimed injury "by not timely contesting the injury" Section 409.021(a) provides that the insurance carrier is to begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission (Commission) and the claimant of its refusal to pay benefits within seven days after receiving written notice of the injury. It is undisputed that the carrier received notice of the claimed injury via the internet on March 18, 2002, at 6:20 p.m. It is also undisputed that the carrier filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Commission on March 26, 2002, which is eight days after it received notice via the internet. The carrier does not argue that receipt of notice over

the internet is not written notice.¹ Rather, the carrier contends that because notice from the employer was given to the carrier after normal business hours on the internet at 6:20 p.m., the carrier did not receive notice until the following day, March 19, 2002, and it timely contested compensability of the claimed injury by filing its TWCC-21 on March 26, 2002.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(d) (Rule 102.3(d)) provides that "[a]ny written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day." Further, Rule 102.3(c) establishes that "[n]ormal business hours in the Texas workers' compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission's El Paso field office whose normal business hours are 8:00 a.m. to 5:00 p.m. Mountain Standard Time." The preamble to Rule 102.3 comments that subsection (d) establishes the date communications are deemed received outside of normal business hours on working days. The preamble goes on to state:

New subsection (d) provides that written or telephonic communications received outside of normal business hours on a working day are considered received at the beginning of normal hours on the next working day. This subsection applies to communications received by **any participant** in the Texas workers' compensation system. [Emphasis added.] A large number of Commission rules and sections of the Act lay out deadlines that begin with the receipt of a communication. Under the current rules, communications received at 11:59 p.m. on a Saturday night can trigger the start of a period to respond even though this is not a generally accepted work period for most of the participants in the system. By deeming communications received outside of normal business hours on a working day to be received at the beginning of the next working day, the rule now reflects the general customs of the vast majority of system participants.

In a response to a comment about Rule 102.3(d), the Commission stated that Rule 102.3(d) "applies to communications among all participants in the Texas workers' compensation system."

Because the written notice to the carrier was received at 6:20 p.m., after normal business hours, the carrier did not receive notice until March 19, 2002, and it timely contested the claim by filing its TWCC-21 on March 26, 2002. Thus, the hearing officer erred. We reverse the hearing officer's determination that the carrier waived its right to contest compensability of the claimed injury and render a new decision and order that the carrier did not waive its right to contest the compensability of the claim.

¹ Rule 102.4(k) provides that, "Written communications include all records, reports, notices, filings, and other information contained either on paper or in an electronic format."

Our reversal of the hearing officer's determination on carrier waiver is not dispositive of the other issues, because the hearing officer found as a matter of fact that the injury is compensable and that the claimant had disability for specified periods. Therefore, the carrier is liable for income and medical benefits in accordance with the 1989 Act.

The true corporate name of the insurance carrier is **FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Roy L. Warren
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge